

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SANDRA NICHOLAS, individually and on behalf :
of a class, : CV-09-1697 (LDW) (WDW)
: :
Plaintiff, :
: :
v. :
: :
RBS CITIZENS, NATIONAL ASSOCIATION, :
: :
Defendant. :
: :
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**PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT AND NOTICE TO THE CLASS**

Plaintiff, Sandra Nicholas, respectfully requests that this Court enter an order: (i) granting preliminary approval of the Class Action Settlement Agreement (“Agreement”) attached hereto as Appendix I, (ii) approving the form of the Class Notice attached to the Agreement as Exhibits A, B, and C and (iii) setting dates for opt-outs, objections, and return of claim forms and a hearing for final approval.

In support of this motion, the Plaintiff states as follows:

1. On April 24, 2009, Plaintiff filed suit alleging that Defendant RBS Citizens, National Association (“RBS”) violated the Electronic Funds Transfer Act, 15 U.S.C. § 1693m. Plaintiff alleged that RBS’s Automatic Teller Machine located at 248 E. Sunrise Highway, Freeport, New York 11520 (the “ATM”) did not display the necessary notice that a fee would or may be charged.
2. After arms-length discussions, Plaintiff and Defendant have reached an agreement to settle Plaintiff’s claims, as set forth in the Agreement. Appendix I.

3. Counsel for Plaintiff and Defendant have reviewed and analyzed the legal and factual issues presented in this action, the risks and expense involved in pursuing the litigation to conclusion, the likelihood of recovering damages in excess of those obtained through this settlement, the protracted nature of the litigation, and the likelihood, costs and possible outcomes of one or more procedural and substantive appeals. Based upon their review and analysis, Plaintiff and Defendant entered into the Agreement.

4. The Parties desire to settle and compromise the litigation on the terms and conditions embodied in the Agreement and agree as follows:

a. Class Certification. The Parties have stipulated to certification of the Class, for settlement purposes only, consisting of: all persons who, from December 5, 2008, until the date of the Preliminary Approval Order, were charged a fee for use of defendant's ATM at 248 E. Sunrise Highway, Freeport, New York 11520.

The parties have also stipulated that Edelman, Combs, Lattuner & Goodwin, LLC and Kleinman, LLC be appointed as Class Counsel.

b. Relief to Class. Defendant agrees to pay \$49,000 ("Settlement Fund") into an escrow account held by Class Counsel to be held in trust and, subject to Court approval and after the incentive award to plaintiff, attorneys' fees, and costs of notice and administration have been deducted, distributed *pro rata* among Class Members who return a fully-executed, complete, timely, and truthful Claim Form together with proof of payment of a transaction fee at the ATM during the Class Period, or fully-executed, complete, timely, and truthful Claim form affirming under penalty of perjury that the Class Member was charged a transaction fee during the Class Period, within the time set by the Court; provided, however, that no single claim exceeds \$100.00.

c. Relief to Plaintiff. Plaintiff shall be paid \$1,100 from the Settlement Fund as an incentive award.

d. Attorneys' Fees. At the time of Final Approval, Class Counsel shall request an amount not to exceed \$16,300.00 (33%) of the Settlement Fund as payment of attorneys' fees.

e. Cy Pres. Any remaining funds in the Settlement Fund following the distribution described above shall be paid as a cy pres award to the Salvation Army of the Syracuse Area, a 501(c)(3) charity.

f. Class Notice. Within 14 days of the Court's preliminary approval of the Agreement, Defendant will cause to be posted at the ATM notice substantially in the form of Exhibit C, along with claim forms in the form of Exhibit A. Within 14 days of the Court's preliminary approval of the Agreement, notice will be published in the form of Exhibit B in a weekday edition of Long Island Newsday covering the Freeport, NY area. The parties may make such changes to the form of the Notice as they shall mutually agree, so long as the Court approves any material substantive changes to the form of the Notice.

g. Class Members' Right to Object or Opt Out. Any Class Member may object to the terms of the settlement or exclude himself or herself from the settlement by opting out of the Class within the time period set by this Court. Any Class Member who opts out of the Class shall not be bound by any prior Court order or the terms of the Agreement and shall not be entitled to any of the monetary benefits set forth in the Agreement.

5. Counsel for Plaintiff and the Class believe that the settlement of this action on the terms and conditions set forth in the Agreement is fair, reasonable, and adequate, and would be in the best interest of the Class members.

6. Fairness Hearing. The Parties request a final fairness hearing as soon as practicable after 120 days have elapsed from preliminary approval of the settlement.

7. Opt-Out Deadline. The Parties propose that Class members be allowed to opt out of the settlement or object to the settlement until 14 calendar days before the date of the final fairness hearing.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order (i) granting preliminary approval of the Agreement attached hereto as Appendix I, (ii) approving the form of the Class Notice attached to the Agreement as Exhibits A, B, and C and (iii) setting dates for opt-outs and objections.

Respectfully Submitted,

s/ Daniel A. Edelman
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CERTIFICATE OF SERVICE

I, Daniel A. Edelman, hereby certify that on January 19, 2010, I caused to be filed the foregoing document with the Clerk of the Court using the CM/ECF System which caused notification of such filing to be sent to the following party via electronic mail:

David Monachino (dmonachino@seyfarth.com)

s/Daniel A. Edelman
Daniel A. Edelman